

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

CITY OF FRANKLIN

COMPLAINANT

VS.

SIMPSON COUNTY WATER DISTRICT

DEFENDANT

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) CASE NO. 92-084  
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O R D E R

On March 4, 1992, the City of Franklin, Kentucky ("Franklin") filed a complaint against Simpson County Water District ("Simpson District") in which it sought, inter alia, an order increasing its water rates to Simpson District to a rate of \$1.68 per 1,000 gallons. Finding that it lacked jurisdiction over the rates of a municipal utility, this Commission dismissed the complaint.

In light of Simpson County Water District v. City of Franklin, Ky., 872 S.W.2d 460, 462 (1994), wherein the Kentucky Supreme Court held that a city waives its exemption from Commission regulation "when it contracts with a regulated utility upon the subjects of rates and service," the Commission's Order was vacated and this matter was remanded to the Commission for further consideration.<sup>1</sup>

Since the filing of Franklin's Complaint and the Simpson County Water District decision, significant changes have occurred in the relationship between Franklin and Simpson District. Simpson

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<sup>1</sup> City of Franklin v. Pub. Serv. Comm'n, No. 93-CA-001072-S, (Ky., May 6, 1994).

District now purchases the bulk of its water requirements from White House Utility District. Franklin supplies water to Simpson District only "on a very limited and as needed basis."<sup>2</sup> Given Simpson District's limited purchases, the importance of Franklin's rate for water service for future use has lessened.

Simpson District has placed far greater emphasis on the rates which Franklin has previously charged. It has moved for recovery of approximately \$184,948.95 allegedly overcollected since April 23, 1993. Simpson District argues that Franklin has charged rates since that date which have not been approved by the Commission and which are thus unlawful.

Before requiring either party to incur the expense of lengthy proceedings on Franklin's proposed rates, the Commission finds that it should first address whether any decision on Franklin's proposed rates can be applied retroactively. The answer to this issue will resolve Simpson District's motion to recover overpayments and may assist in resolving any dispute on prospective application of the proposed rates.

IT IS THEREFORE ORDERED that:

1. The parties shall within 30 days of the date of this Order submit written briefs on the following issues:

- Is the Commission limited to setting Franklin's rates on a prospective basis?

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<sup>2</sup> Letter from Robert D. Wilkey (legal counsel for City of Franklin) to Don Mills (Public Service Commission Executive Director) (Mar. 8, 1995).

- May the Commission establish rates for Franklin which apply to past periods for service which has already been provided?
- If the Commission has such authority, for what periods may it retroactively set rates?
- In light of the Kentucky Supreme Court decision in Simpson County Water District v. City of Franklin, Ky., 872 S.W.2d 460 (1994), are the rates which Franklin has charged to Simpson District since April 23, 1993 lawful rates?
- If the rates charged by Franklin to Simpson District since April 23, 1993, are not lawful rates, may the Commission order their refund?

2. Each party may within 45 days of the date of this Order submit a reply brief.

Done at Frankfort, Kentucky, this 4th day of April, 1995.

PUBLIC SERVICE COMMISSION

  
For the Commission

ATTEST:

  
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Executive Director